

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

APRIVEN PARTNERS, LP,

Plaintiff,

V.

THOMAS J. PETTERS,

Defendant.

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No. \_\_\_\_\_

**COMPLAINT FOR DAMAGES**

APRIVEN PATNERS, LP, Plaintiff, files this its Complaint for Damages against Thomas J. Petters, Defendant, and for cause of action would show the following:

**I.**

**THE PARTIES**

1. Apriven Partners, LP (“Apriven”), is a limited partnership organized and existing under the laws of the State of Texas with its principal place of business in Dallas, Texas. None of Apriven’s partners, general or limited, are citizens of the State of Minnesota.

2. Defendant, Thomas J. Petters (“Petters”), is an individual resident and citizen of the State of Minnesota. Petters may be served with process by serving him at 655 Bushaway Road, Wayzata, Minnesota, his place of residence.

**II.**

**JURISDICTION AND VENUE**

3. Plaintiff and each of its partners are citizens of a state other than the State of Minnesota. Defendant is a citizen of the State of Minnesota. Petters is not a citizen of the State of Texas. At the time this action was commenced, all Plaintiffs were diverse in their citizenship

from Defendant. Accordingly, complete diversity of citizenship exists between Plaintiffs and Defendant. In addition, the amount in controversy exceeds \$75,000. This court therefore has jurisdiction of the Defendant and this matter pursuant to 28 U.S.C. § 1332.

4. Venue of this action in this District and Division is proper inasmuch as a substantial part of the events or omissions giving rise to this claim occurred in this state, district and division. In particular, the Promissory Notes on which this action is based are payable in Dallas, Texas. Thus, venue in this district and division is appropriate pursuant to 28 U.S.C. § 1391(a)(2).

### **III.**

#### **CAUSE OF ACTION FOR BREACH OF PROMISSORY NOTES**

5. Petters Company, Inc., a Minnesota corporation, is the borrower under six (6) Promissory Notes executed at various times between June 5, 2008 and August 7, 2008. The payee and current holder of each of said Promissory Notes is Plaintiff, Apriven Partners, LP. Said Promissory Notes are attached as Exhibits 1 through 6 and incorporated herein by reference.

6. Four (4) of the Promissory Notes (those marked as Exhibits 1 through 4) have, under their own terms, matured and are now due and payable.

7. The Promissory Notes marked as Exhibits 5 and 6 were executed effective August 5, 2008, and August 7, 2008, respectively. The Note executed effective August 5, 2008, matures and is fully due and payable on November 3, 2008. The Note executed effective August 7, 2008, is due and fully payable on November 5, 2008.

8. As of the date of the filing of this action, the Notes made effective August 5, 2008 and August 7, 2008 (Exhibits 5 and 6) contain an automatic acceleration clause. Pursuant to the terms of each of those Notes, "an acceleration event" includes the borrower becoming insolvent.

Plaintiff will show that the borrower, Petters Company, Inc., was at the time of the filing of this action insolvent. Thus, pursuant to the terms of the Promissory Notes attached as Exhibits 5 and 6, such notes have been automatically accelerated and are due and payable.

9. Defendant, Thomas J. Petters, guaranteed each of the Promissory Notes, attached as Exhibits 1 through 6, as reflected by his signature as guarantor thereon. Pursuant to the provisions of the Promissory Notes, Defendant Petters agreed to be "liable for the Guaranteed Debt as primary obligor."

10. Plaintiff therefore brings this action against Defendant Thomas J. Petters in his capacity as a guarantor and primary obligor of each of the Promissory Notes Nos. 1 through 6, in the total sum of Forty-one Million Five Hundred Thousand Dollars (\$41,500,000), together with interest thereon as provided in said Promissory Notes.

11. Plaintiff further brings this action against Defendant Thomas J. Petters to recover all costs of collection of this Note, including Plaintiff's reasonable attorney's fees, as specified in each of said Promissory Notes as well as in the Texas Civil Practice and Remedies Code.

#### IV.

12. Plaintiff specifically pleads that all steps necessarily precedent to the bringing of this action have been taken or waived.

WHEREFORE, PREMISES CONSIDERED, Plaintiff, Apriven Partners, LP, respectfully requests that the Defendant be summoned and required to appear and answer herein, and that upon a trial hereof, Plaintiff have and recover Plaintiff's actual damages in the amount of Forty-one Million, Five Hundred Thousand Dollars (\$41,500,000), together with interest as provided in each of the Promissory Notes forming the basis of this action, together with all of Plaintiff's costs and attorney's fees incurred.

Respectfully submitted,

/s/ J. Albert Kroemer

J. Albert Kroemer

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